

57-8a-107 (Effective 07/01/14). Amending the declaration to make provisions of this chapter applicable.

(1) An association may amend the declaration to make applicable to the association a provision of this chapter that is enacted after the creation of the association, by complying with:

(a) the amendment procedures and requirements specified in the declaration and applicable provisions of this chapter; or

(b) the amendment procedures and requirements of this chapter, if the declaration being amended does not contain amendment procedures and requirements.

(2) If an amendment under Subsection (1) adopts a specific section of this chapter:

(a) the amendment grants a right, power, or privilege permitted by that specific section; and

(b) all correlative obligations, liabilities, and restrictions in that section also apply.

Enacted by Chapter 152, 2013 General Session

57-8a-108 (Effective 07/01/14). Rules against perpetuities and unreasonable restraints -- Insubstantial failure to comply.

(1) The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of a governing document.

(2) (a) A declaration that fails to comply with this chapter does not render a title to a lot and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

(b) This chapter does not affect whether a substantial failure impairs marketability.

Enacted by Chapter 152, 2013 General Session

57-8a-211 (Effective 07/01/14). Reserve analysis -- Reserve fund.

(1) As used in this section:

(a) "Reserve analysis" means an analysis to determine:

(i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, or restoring common areas that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the association's general budget or from other association funds; and

(ii) the appropriate amount of any reserve fund.

(b) "Reserve fund line item" means the line item in an association's annual budget that identifies the amount to be placed into a reserve fund.

(2) Except as otherwise provided in the governing documents, a board shall:

(a) cause a reserve analysis to be conducted no less frequently than every six years; and

(b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.

(3) The board may conduct a reserve analysis itself or may engage a reliable

person or organization, as determined by the board, to conduct the reserve analysis.

(4) A reserve fund analysis shall include:

(a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;

(b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;

(c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;

(d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and

(e) a reserve funding plan that recommends how the association may fund the annual contribution described in Subsection (4)(d).

(5) An association shall:

(a) annually provide lot owners a summary of the most recent reserve analysis or update; and

(b) provide a copy of the complete reserve analysis or update to a lot owner who requests a copy.

(6) In formulating its budget each year, an association shall include a reserve fund line item in:

(a) an amount the board determines, based on the reserve analysis, to be prudent; or

(b) an amount required by the governing documents, if the governing documents require an amount higher than the amount determined under Subsection (6)(a).

(7) (a) Within 45 days after the day on which an association adopts its annual budget, the lot owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association at a special meeting called by the lot owners for the purpose of voting whether to veto a reserve fund line item.

(b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve fund line item exists in a previously approved annual budget of the association that was not vetoed, the association shall fund the reserve account in accordance with that prior reserve fund line item.

(8) (a) Subject to Subsection (8)(b), if an association does not comply with the requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:

(i) injunctive relief requiring the association to comply with the requirements of Subsection (5), (6), or (7);

(ii) \$500 or the lot owner's actual damages, whichever is greater;

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

(b) No fewer than 90 days before the day on which a lot owner files a complaint under Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to the association.

(c) A notice under Subsection (8)(b) shall state:

(i) the requirement in Subsection (5), (6), or (7) with which the association has failed to comply;

(ii) a demand that the association come into compliance with the requirements; and

(iii) a date, no fewer than 90 days after the day on which the lot owner delivers the notice, by which the association shall remedy its noncompliance.

(d) In a case filed under Subsection (8)(a), a court may order an association to produce the summary of the reserve analysis or the complete reserve analysis on an expedited basis and at the association's expense.

(9) (a) A board may not use money in a reserve fund:

(i) for daily maintenance expenses, unless a majority of association members vote to approve the use of reserve fund money for that purpose; or

(ii) for any purpose other than the purpose for which the reserve fund was established.

(b) A board shall maintain a reserve fund separate from other association funds.

(c) This Subsection (9) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.

(10) Subsections (2) through (9) do not apply to an association during the period of administrative control.

(11) This section applies to each association, regardless of when the association was created.

Amended by Chapter 152, 2013 General Session

Amended by Chapter 419, 2013 General Session

57-8a-212 (Effective 07/01/14). Content of a declaration.

(1) An initial declaration recorded on or after May 10, 2011 shall contain:

(a) the name of the project;

(b) the name of the association;

(c) a statement that the project is not a cooperative;

(d) a statement indicating any portions of the project that contain condominiums governed by Chapter 8, Condominium Ownership Act;

(e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;

(f) the name of each county in which any part of the project is located;

(g) a legally sufficient description of the real estate included in the project;

(h) a description of any limited common areas and any real estate that is or is required to become common areas;

(i) any restriction on the alienation of a lot, including a restriction on leasing; and

(j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and

(ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to (name of trustee), with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."

(2) A declaration may contain any other information the declarant considers appropriate, including any restriction on the use of a lot, the number of persons who may occupy a lot, or other qualifications of a person who may occupy a lot.

(3) The location of a limited common area or real estate described in Subsection (1)(g) may be shown on a subdivision plat.

Amended by Chapter 152, 2013 General Session

57-8a-220 (Effective 07/01/14). Creditor approval may be required for lot owner or association action under declaration -- Creditor approval presumed in certain circumstances -- Notice to creditor or creditor's successor.

(1) (a) Subject to Subsection (1)(b), a declaration may:

(i) condition the effectiveness of lot owners' actions specified in the declaration on the approval of a specified number or percentage of lenders holding a security interest in the lots; or

(ii) condition the effectiveness of association actions specified in the declaration on the approval of a specified number or percentage of lenders that have extended credit to the association.

(b) A condition under Subsection (1)(a) may not:

(i) deny or delegate the lot owners' or board's control over the association's general administrative affairs;

(ii) prevent the association or board from commencing, intervening in, or settling any litigation or proceeding; or

(iii) prevent an insurance trustee or the association from receiving or distributing insurance proceeds under Subsection 57-8a-405(11).

(c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection (1)(b) by:

(i) requiring the association to deposit the association's assessments before default with the lender assigned the income; or

(ii) requiring the association to increase an assessment at the lender's direction by an amount reasonably necessary to pay the loan in accordance with the loan terms.

(d) This Subsection (1) applies to:

(i) an association formed before, on, or after May 10, 2011; and

(ii) documents created and recorded before, on, or after May 10, 2011.

(2) Subject to this chapter and applicable law, a lender who has extended credit to an association secured by an assignment of income or an encumbrance of the common areas may enforce the lender's security agreement as provided in the agreement.

(3) (a) Subject to Subsection (4), a security holder's consent that is required under Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:

(i) the association sends written notice of the proposed amendment or action by certified or registered mail to the security holder's address stated in a recorded document evidencing the security interest; and

(ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security holder's response does not receive a response within 60 days after the

association sends notice under Subsection (3)(a)(i).

(b) If a security holder's address for receiving notice is not stated in a recorded document evidencing the security interest, an association:

(i) shall use reasonable efforts to find a mailing address for the security holder; and

(ii) may send the notice to any address obtained under Subsection (3)(b)(i).

(4) If a security holder responds in writing within 60 days after the association sends notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to another person, the association:

(a) shall:

(i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the security interest at the address provided by the security holder in the security holder's response; or

(ii) if no address is provided:

(A) use reasonable efforts to find a mailing address for the person assigned or conveyed the security interest; and

(B) send notice by certified or registered mail to the person at the address that the association finds under Subsection (4)(a)(ii)(A); and

(b) may not presume the security holder's consent under Subsection (3)(a) unless the person designated in a notice under Subsection (4)(a) to receive the response from the person assigned or conveyed the security interest does not receive a response within 60 days after the association sends the notice.

Amended by Chapter 152, 2013 General Session

57-8a-222 (Effective 07/01/14). Removing or altering partition or creating aperture between dwelling units on adjoining lots.

(1) Subject to the declaration, a lot owner may, after acquiring an adjoining lot with a dwelling unit that shares a common wall with a dwelling unit on the lot owner's lot:

(a) remove or alter a partition between the lot owner's lot and the acquired lot, even if the partition is entirely or partly common areas; or

(b) create an aperture to the adjoining lot or portion.

(2) A lot owner may not take an action under Subsection (1) if the action would:

(a) impair the structural integrity or mechanical systems of the building or either lot;

(b) reduce the support of any portion of the common areas or another lot; or

(c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local government land use ordinance, or a building code.

(3) The board may require a lot owner to submit, at the lot owner's expense, a registered professional engineer's or registered architect's opinion stating that a proposed change to the lot owner's lot will not:

(a) impair the structural integrity or mechanical systems of the building or either lot;

(b) reduce the support or integrity of common areas; or

(c) compromise structural components.

(4) The board may require a lot owner to pay all of the association's legal and other expenses related to a proposed alteration to the lot or building under this section.

(5) An action under Subsection (1) does not change an assessment or voting right attributable to the lot owner's lot or the acquired lot, unless the declaration provides otherwise.

Enacted by Chapter 152, 2013 General Session

57-8a-223 (Effective 07/01/14). Eminent domain -- Common area.

Unless the declaration provides otherwise:

(1) if part of the common area is taken by eminent domain:

(a) the entity taking part of the common area shall pay to the association the portion of the compensation awarded for the taking that is attributable to the common area; and

(b) the association shall equally divide any portion of the award attributable to the taking of a limited common area among the owners of the lots to which the limited common area was allocated at the time of the taking; and

(2) an association shall submit for recording to each applicable county recorder the court judgment or order in an eminent domain action that results in the taking of some or all of the common area.

Enacted by Chapter 152, 2013 General Session

57-8a-224 (Effective 07/01/14). Responsibility for the maintenance, repair, and replacement of common area and lots.

(1) As used in this section:

(a) "Emergency repair" means a repair that, if not made in a timely manner, will likely result in immediate and substantial damage to a common area or to another lot.

(b) "Reasonable notice" means:

(i) written notice that is hand delivered to the lot at least 24 hours before the proposed entry; or

(ii) in the case of an emergency repair, notice that is reasonable under the circumstances.

(2) Except as otherwise provided in the declaration or Part 4, Insurance:

(a) an association is responsible for the maintenance, repair, and replacement of common areas; and

(b) a lot owner is responsible for the maintenance, repair, and replacement of the lot owner's lot.

(3) After reasonable notice to the occupant of the lot being entered, the board may access a lot:

(a) from time to time during reasonable hours, as necessary for the maintenance, repair, or replacement of any of the common areas; or

(b) for making an emergency repair.

(4) (a) An association is liable to repair damage it causes to the common areas or to a lot the association uses to access the common areas.

(b) An association shall repair damage described in Subsection (4)(a) within a

time that is reasonable under the circumstances.

(5) Subsections (2), (3), and (4) do not apply during the period of administrative control as defined in Section 57-8a-104.

Enacted by Chapter 152, 2013 General Session

57-8a-501 (Effective 07/01/14). Board acts for association.

Except as limited in a declaration, the association bylaws, or other provisions of this chapter, a board acts in all instances on behalf of the association.

Enacted by Chapter 152, 2013 General Session

57-8a-502 (Effective 07/01/14). Period of administrative control.

(1) Unless otherwise provided for in a declaration, a period of administrative control terminates on the first to occur of the following:

(a) 60 days after 75% of the lots that may be created are conveyed to lot owners other than a declarant;

(b) seven years after all declarants have ceased to offer lots for sale in the ordinary course of business; or

(c) the day the declarant, after giving written notice to the lot owners, records an instrument voluntarily surrendering all rights to control activities of the association.

(2) (a) A declarant may voluntarily surrender the right to appoint and remove a member of the board before the period of administrative control terminates under Subsection (1).

(b) Subject to Subsection (2)(a), the declarant may require, for the duration of the period of administrative control, that actions of the association or board, as specified in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(3) (a) Upon termination of the period of administrative control, the lot owners shall elect a board consisting of an odd number of at least three members, a majority of whom shall be lot owners.

(b) Unless the declaration provides for the election of officers by the lot owners, the board shall elect officers of the association.

(c) The board members and officers shall take office upon election or appointment.

Enacted by Chapter 152, 2013 General Session

57-8a-601 (Effective 07/01/14). Consolidation of multiple associations.

(1) Two or more associations may be consolidated into a single association as provided in Title 16, Chapter 6a, Part 11, Merger, and this section.

(2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of consolidation between two or more associations to consolidate into a single association is not effective unless it is approved by the lot owners of each of the consolidating associations by the highest percentage of allocated voting interests of the lot owners required by each association to amend its respective declaration, articles, or bylaws.

- (3) A declaration of consolidation under Subsection (2) shall:
- (a) be prepared, executed, and certified by the president of each of the consolidating associations; and
 - (b) provide for the reallocation of the allocated interests in the consolidated association by stating:
 - (i) the reallocations of the allocated interests in the consolidated association or the formulas used to reallocate the allocated interests; or
 - (ii) (A) the percentage of overall allocated interests of the consolidated association that are allocated to all of the lots comprising each of the consolidating associations; and
 - (B) that the portion of the percentages allocated to each lot formerly comprising a part of a consolidating association is equal to the percentages of allocated interests allocated to the lot by the declaration of the consolidating association.
- (4) A declaration of consolidation under Subsection (2) is not effective until it is recorded in the office of each applicable county recorder.
- (5) Unless otherwise provided in the declaration of consolidation:
- (a) the consolidated association resulting from a consolidation under this section is the legal successor for all purposes of all of the consolidating associations;
 - (b) the operations and activities of all of the consolidating associations shall be consolidated into the consolidated association; and
 - (c) the consolidated association holds all powers, rights, obligations, assets, and liabilities of all consolidating associations.

Enacted by Chapter 152, 2013 General Session